IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 31519 of 2007(B)

PETITIONER:

M/S. GLASS FIBRES,
KRISHNA NIVAS, MAVELLOOR P.O., MAVELLOOR,
KOTTAYAM DISTRICT, PIN-686 609, REPRESENTED BY ITS MANAGING PARTNER, MR.M.P. GOPAKUMAR.

BY ADV. SRI.ALIAS M.CHERIAN

RESPONDENTS:
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1. HINDUSTAN NEWS PRINT LTD.,
NEWS PRINT NAGAR P.O., MAVELLOOR, KOTTAYAM DISTRICT
REPRESENTED BY ITS MANAGING DIRECTOR
PIN - 686 616.

2. THE GENERAL MANAGER (WORKS),
HINDUSTHAN NEWSPRINT LIMITED, NEWSPRINT NAGAR P.O.
VELLOOR, KOTTAYAM-686 616.

3. MR. K.J.MATHEW, AGED ABOUT 45 YEARS,
KUNNEAL HOUSE, PULAYANTTINAKRA P.O.,KANJIRAMATTOM,
ERNAKULAM-682 315.

BY ADV. SRI.K.RAMAKUMAR (FOR R3)
SRI.R.JAYACHANDRAN (FOR R3)
SRI.M.MANOJKUMAR (CHELAKKADAN)
SRI.A.M.SHAFFIQUE (FOR R1 & R2)
SRI.E.K.NANDAKUMAR (FOR R1 & R2)
SRI.A.K.JAYASANKAR NAMBIAR (FOR R1 & R2)
SRI.ANIL D. NAIR (FOR R1 & R2)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 31519/2007(B)

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE PART-B TENDER CONDITIONS.

EXT. P2: COPY OF PRE-QUALIFICATION CRITERIA.

EXT. P3: COPY OF COVERING LETTER NO.GF/47/2007-2008 DATED 25.9.2007.

EXT. P4: COPY OF TENDER FORM OF PART-D PRICE BID.

EXT. P5: COPY OF COMPLAINT DATED 23.10.2007.

RESPONDENT'S EXHIBITS:

EXT. R1(A): COPY OF THE RELEVANT PORTION OF THE TENDER DOCUMENT SUBMITTED BY THE 3RD RESPONDENT HEREIN, SHOWING THE DISPUTED ENTRY.

EXT. R1(B): COPY OF THE RELEVANT PAGE OF THE TENDER OPENING REGISTER.

EXT. R3(A): COPY OF CERTIFICATE DT.20.4.07 ISSUED BY RESPONDENT COMPANY SHOWING THE CONTRACT WORKS DONE BY R3.

EXT.R3(B): COPY OF COMMUNICATION DT.20.10.2007 ISSUED BY THE COMPANY TO R3.

/TRUE COPY/

P.A. TO JUDGE

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S.SIRI JAGAN, J.

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W.P.(C) No. 31519 of 2007

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Dated this the 14th day of November, 2007

JUDGMENT

The petitioner submitted tenders for the work of News Print Handling pursuant to notification inviting tenders issued by the 1st respondent-company. Petitioner is now aggrieved by the awarding of the tender to 3rd respondent on two grounds. First is that the 3rd respondent is not pre-qualified to participate in the tender. The 2nd is that the original quotation of the 3rd respondent was subsequently corrected. There are 8 items for which the tenderers were to quote prices. In item no.2 regarding the rate for loading to trucks, the 3rd respondent had actually quoted Rs.18/- in figures and 16 in words which was a subsequent correction according to the petitioner. The petitioner therefore prays the following reliefs:

> "1) To issue a writ of certiorari or any other appropriate writs, directions or orders calling for the records leading up to Ext.P5 and restrain respondents 1 and 2 from awarding the work contract of 'Newsprint Handling' in respect of Tender No.HNL/EMCC/07/1364/T-1091, to the

3rd respondent.

2) To issue a writ of certiorari or any other appropriate writs, directions or orders calling for the records leading up to Ext.P5 and set aside the grant of work contract of 'Newsprint Handling' in respect of Tender No.HNL/EMCC/07/1364/T-1091, to the 3rd respondent.

3) Declare that 3rd respondent is unfit and not entitled to participate in the tender for quoting the work contract of 'Newsprint Handling' in respect of Tender No.HNL/EMCC/07/1364/T-1091 as per Ext.P1 and P2 terms and conditions issued by respondents 1 and 2 and his tender is liable to be rejected or declined.

4) To issue a writ of mandamus or any other appropriate writs, directions or orders directing respondents 1 and 2 to award the work contract of Newsprint handling in respect of Tender No. HNL/EMCC/07/1364/T-1091 to the petitioner being the lowest Tenderer.

5) Direct respondents 1 and 2 to produce all files and documents relating to the work contract of 'Newsprint Handling' in respect of Tender No.HNL/EMCC/07/1364/T-1091 before this Hon'ble Court.

6) Grant such other reliefs which are deem fit and proper in the circumstance of the case.

7) Grant the cost of the petitioner for these proceedings from the 1st and 2nd respondents."

2. Ist and 2nd respondents have filed the counter affidavit paragraph 9 of which reads thus:

"With regard to the averments contained in Grounds A, B and C of the writ petition, it is submitted that they are devoid of any merit, and hence denied. The averments in

ground A that the 3rd respondent did not qualify any of the criteria specified in Exhibit P2 is factually incorrect. While one of the pre-qualification criteria prescribed in the tender document was that the tenderers should have successfully completed three labour oriented works contracts of annual value not less than 40% of the annual PAC(59.15 lakh) during any of the preceding seven years from 31.3.2007, it was found that the 3rd respondent had completed work of the said nature, subject to a marginal deficit of Rs.70,000/- in the 3rd work during the stipulated period. When the respondent Company sought clarification from its internal audit department as to whether the 3rd respondent could be deemed to have complied with the pre-qualification criteria for the work, the internal audit department clarified that in view of the works undertaken by the 3rd respondent in the past, and also considering the fact that the deficit in the last work was only Rs.70,000/-, when compared to the total value of the works undertaken, his bid could also be considered for the purpose of awarding the work. This suggestion of the internal audit department was accepted by the Managing Director of the respondent Company and, accordingly, his bid also was considered along with those of the other three tenderers, who were qualified under the tender conditions.

3. The 3rd respondent also could not satisfy me that the above statements in the counter affidavit of the respondents 1 and 2 are not correct. That being so it is evident that the 3rd respondent is not pre-qualified for the work. In the above circumstances I need not go into the second contention of the petitioner. Accordingly, the 3rd respondent being not pre-qualified to participate in the tender process, the award of the contract to the 3rd respondent is hereby quashed and the

respondents 1 and 2 are directed to consider the matter afresh in accordance with law.

The writ petition is disposed of as above.

S.SIRI JAGAN,
JUDGE.

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